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Infrastructure New Zealand

Submission to the Environment Committee – Resource Management (Consenting and Other System Changes) Amendment Bill

1. About Infrastructure New Zealand

- 1.1 Infrastructure New Zealand (INZ) welcomes this opportunity to submit to the Environment Committee on the Resource Management (Consenting and Other System Changes) Amendment Bill and recommends that the Bill proceeds.
- 1.2 INZ is New Zealand's membership organisation for the infrastructure sector. We promote best practice in national infrastructure development through research, advocacy, and public and private sector collaboration. Our members come from diverse sectors across New Zealand and include infrastructure service providers, investors, operators, and owners.
- 1.3 This submission represents the views of Infrastructure New Zealand as a collective whole and may not necessarily represent the views of individual member organisations. We have also encouraged our members to make their own submissions raising those issues specific to their areas of interest or expertise.

2. General Comments

- 2.1 It is well recognised that New Zealand faces urgent challenges that require, among other things, a paradigm shift in terms of how the planning system provides for infrastructure. As a country we have a significant infrastructure deficit in excess of \$210 billion.
- 2.2 Consenting major infrastructure and other projects in New Zealand takes too long, costs too much and places insufficient value on the economic and social benefits of development relative to other considerations. The Resource Management Act (RMA) can be a barrier to development, and re-consent is costly in terms of time and money on our economy. A 2021 report for the New Zealand Infrastructure Commission¹ / Te Waihangā estimated that current consenting processes for infrastructure projects cost \$1.29 billion per year and that it took nearly twice as long to get a resource consent for key projects as it did five years before.
- 2.3 The Infrastructure Commission also found that projects valued under \$1 million are spending between 13% and 16% of their project budgets on resource consenting. These consenting costs are primarily incurred by applicants having to seek external expert advice, with nearly 70% of consent-related expenditure going to external experts and legal costs. The delay and cost do not often result in better decision-making or environmental, social and economic outcomes.

We support the direction of the Bill

- 2.4 INZ supports this Bill and its interim approach to streamlining current requirements and processes and is pleased to see the proposed changes to enable easier consenting of new infrastructure, including for renewable energy and houses.
- 2.5 This Bill provides necessary interim amendments to support the efficient planning and delivery of infrastructure while the Government is committed to a wholesale reform of the RMA during this Parliamentary term.

We support the upcoming National Direction and Phase 3 of the RMA reform

- 2.6 We also support the carrying over of the final Amendment provisions into the Phase 3 RMA replacement reforms which is expected to be introduced in mid-2025.
- 2.7 INZ has long supported the development of two pieces of resource management legislation - one to manage environmental effects arising from activities, and another to enable urban development and infrastructure. We look forward to the introduction of these Bills in due course.
- 2.8 We also look forward to seeing the supporting national direction instruments – particularly the long-awaited national direction on infrastructure and natural hazards. We look forward to the opportunity to provide feedback on these as they are developed also.

¹ The Cost of Consenting of Infrastructure Projects in New Zealand, July 2021, Sapere report commissioned by the Infrastructure Commission.

However, we want to note that the uncertainty around RMA reform is creating uncertainty

- 2.9 While we generally support the Bill, we do note that there has been a constant state of change, ongoing reviews and legislative amendment, and uncertainty with resource management reforms over the last decade.
- 2.10 INZ continues to advocate for a bipartisan approach to the development of a replacements for the RMA that will provide an enduring regime that provides for better environmental outcomes and well as facilitating sustainable development of infrastructure to meet this country's needs.
- 2.11 Detailed feedback on the different aspects of the Bill is outlined below.

3. Infrastructure and Energy

- 3.1 The Bill amends the RMA to specify default maximum time frames for consent processing and establish default consent durations for renewable energy and infrastructure consents to improve process and outcome certainty for system users. These provisions are intended to reduce the cost for operators and increase investment in renewable energy infrastructure.
- 3.2 Overall, **INZ supports** these proposed changes, in particular, INZ supports:
 - 3.2.1 The 1-year decision-making processes for renewable energy generation consents, and the prohibition on consent authorities extending processing timeframes in relation to these applications.
 - 3.2.2 The introduction of a default 35-year duration for consents related to renewable energy generation and long-lived infrastructure projects, with the intention of providing more stability for long-term investment in these sectors.
 - 3.2.3 The doubling of the lapse period for renewable energy consents, increasing it from 5 to 10 years. This extension will provide more time for projects to commence, helping to reduce the risk of consents expiring before projects are given effect to.
- 3.3 It is critical that the system prioritises faster and easier consenting for renewable energy decision-making. Global investment in renewable energy sources is at an all-time high. New Zealand must ensure its process are consistent and competitive with other jurisdiction while also allowing the assessment of all relevant considerations.
- 3.4 However, INZ also has concerns that local authorities may not have the resources to manage these applications within the required timeframe, and an unintended consequence may be that more consents are refused because of insufficient time to consider. This needs to be monitored as part of the implementation.
- 3.5 Infrastructure is by its very nature a long-term investment consequently, there needs to be certainty and an element of longevity around consent duration. The extension of consent durations to 35 years is strongly supported.

- 3.6 Also, it takes time to corral the necessary funding, materials, workforce and construction plans before construction can commence once planning approval is finally gained. The proposed extension of the consent lapse period to 10 years is supported. However, given the need for the country to transition to zero emissions renewable energy sources, we wish to see urgency in all phases of the development of these activities.
- 3.7 We also note that some infrastructure, such as the Huntly Power Station and hydroelectric schemes, would benefit from longer resource consent durations than 35 years. This is because they are significant and long-lived assets.
- 3.8 **INZ also strongly supports** the changes to:
- 3.8.1 Simplify the requirements and costs for designating authorities by restricting when an assessment of alternatives is required and simplifying other assessments and information requirements.
 - 3.8.2 Provide for Port companies to be given requiring authority status for landward operations, and also for inland ports.
- 3.9 Streamlining the process through the restriction of assessment of alternatives is strongly supported also. Where a site is already owned then this is accepted but where land is required to be acquired, then the opportunity to assess alternative locations, routes and methods for the activity is still supported in order to optimise outcomes overall. INZ sees this as a key area where both significant project time and cost can be saved when the assessment of alternative locations is simply not warranted.
- 3.10 INZ welcomes the inclusion of amendments to support the development and efficiency of ports. Ports are significant infrastructure owners and operators and should be included in the definition of a network utility operator. It is logical that they be treated as other infrastructure operators and enable then to have requiring authority status of their landside operations and also for inland ports. This addresses a current anomaly.
- 3.11 We also support the expansive definition of “long-lived infrastructure” which goes beyond renewable energy and includes aspects such as structures for transport on land by cycleways, rail, roads, walkways, or any other means. We also support the inclusion of the generation of electricity for personal use, such as distributed generation through solar panels.
- 3.12 However, we do note that this definition does not include water supply, stormwater or wastewater infrastructure. We also note that this definition does not consider infrastructure supply chain inputs for infrastructure projects (such as asphalt, aggregates, and concrete).

Recommendation Clause 4

Amend Interpretation of long-lived infrastructure to include:

- *infrastructure providing water supply, stormwater and wastewater distribution.*
- *components of the infrastructure supply chain*

Recommendation clause 123(b)

Amend clause to add an additional exemption for when an applicant is the proponent of a regionally or nationally significant, long-lived infrastructure project, in which case a longer consent duration can be applied for.

4. Housing and urban development

Opting out of Medium Density Residential Standards

- 4.1 The Bill introduces a ratification vote to allow relevant councils to opt-out of the Medium Density Residential Standards (MDRS), provided they demonstrate 30 years' worth of housing growth. As part of this, it also provides a pathway for councils to progress a plan change to remove or alter the MDRS and deal with consequential matters. This includes requiring councils to use the Streamlined Planning Process (SPP) to progress plan changes to remove or alter the MDRS and removing the requirement to apply to the Minister for the Environment to use the SPP when removing or altering the MDRS or amending decision-making arrangements for any plan change using the SPP.
- 4.2 For territorial authorities that have incorporated the MDRS into its district plan, Clause 17 (Section 77FA(1)) of the Bill requires that they must decide whether to retain the MDRS in the plan, alter the MDRS in the plan, or remove the MDRS in the plan by resolution no later than 1 year after that section comes into force. The legislative process timeframe would likely result in territorial authorities having until mid-to-late 2026 to make a decision around MDRS. For territorial authorities that have not incorporated the MDRS into its district plan, Section 77FA(2) must decide whether to progress the intensification planning instrument (IPI) that it has notified or request the Minister for approval to withdraw its IPI.
- 4.3 **INZ supports** this proposed approach for the opt out, including the need for councils to demonstrate 30 years' worth of housing growth. However, as noted in the supporting regulatory impact statement, we do note that there is a risk some councils may not be able to provide for 30 years-worth of development capacity and therefore would be unable to opt out of the MDRS. For example, some councils are constrained by geographical constraints, natural hazards, requirements in other national direction instruments, and are experiencing issues with funding and financing tools for growth-related infrastructure.
- 4.4 We also support the 1-year timeframe on MDRS decisions, we recommend that no further extensions are granted beyond that of legislation. To create certainty, local government must deliver plan changes as soon as possible, we also encourage the Government to set clear expectations of when local government are to complete plan changes and provide no room for expansions.

- 4.5 We also support the SPP for removing or altering the MDRS within the legislation as a mechanism to more quickly provide certainty for the property sector.

Bipartisan agreement needed

- 4.6 And finally, we want to note that we are disappointed to see a lack of bipartisan support for these changes. Revoking or amending bipartisan agreements without bipartisan support does not provide long term certainty and confidence that New Zealand businesses and the public sector needs to undertake decision making. Infrastructure including housing and urban development are critical for New Zealand's communities and businesses. Clear consistent direction is needed to provide developers and investors with the certainty to make long term commitments. Constantly changing of the rules and delays to implementation in some areas jeopardises this.

Intervention powers

- 4.7 The Bill provides the Minister for the Environment with new intervention powers to ensure compliance with national direction, including housing and business development capacity assessment.
- 4.8 **INZ supports** these provisions (clauses 6 & 7) to ensure that local government are following national direction. We know that some territorial authorities are not following national direction and creating work arounds. For example, some have quoted general infrastructure constraints as a reason to reduce development, and others have created blanket flood zone overlays.

Heritage buildings

- 4.9 The Bill also provides for heritage buildings and structures to be listed or delisted using simplified planning processes. This simplification of the delisting process should help address some of the frustration with the current approach which has delayed infrastructure and housing development while maintaining dangerous structures in place which pose a risk to the community and blight the surrounding environment, preventing progress in the urban environment.
- 4.10 **INZ supports** policies that strike an appropriate balance between preserving the natural and built environment, health and safety, and redevelopment, and support enabling the removal of heritage status where appropriate.

5. Natural Hazards

Decline of land use consents

- 5.1 The Bill clarifies and strengthens councils' ability to decline land use consents, or apply appropriate conditions, where there are significant risks of natural hazards.

- 5.2 We recognise long standing issues with the level of importance placed on natural hazard risk in land use planning under the RMA. As outlined in our [Position Paper on climate adaptation](#), New Zealand is missing a consistent approach to recovery after natural disasters, an enduring climate adaptation framework. The RMA, in particular, does not provide a framework for natural hazard risk management when planning our regions and urban areas or making decisions on resource consents, and that there is a lack of clear roles and responsibilities. This means that our councils are often hamstrung in their abilities to plan for, and mitigate against, the effects of climate change.
- 5.3 **INZ supports** the proposed changes in relation to the clarification of council's ability to decline land use consents or impose conditions. As noted in the regulatory impact statement, this option provides an additional tool in the RM system for councils to manage the risk from significant natural hazards on land use activities (such as residential housing), helping to ensure that future development is not located where it is at significant risk from natural hazards.
- 5.4 This could reduce risk to life and property and help avoid or reduce significant future costs of disaster events by restricting development in areas of significant natural hazard risk (where risks cannot be sufficiently mitigated).
- 5.5 INZ does however recognise that this may impact on new housing supply and development certainty, however, believe that the long-term benefits outweigh these costs.

Immediate legal effect

- 5.6 The Bill provides for plan changes that introduce new natural hazards rules will now have immediate legal effect, meaning that rules need to be complied with sooner than is currently required under the default timing,
- 5.7 While we recognise that this approach can have short-term cost implication and cause delays, we support the approach as it ensures that rules relating to natural hazard risk have legal effect as early as possible. In the longer-term, However, there would be costs arising from allowing development to occur in locations that are inappropriate from a natural hazard risk perspective, or without the necessary mitigation to reduce risks to an acceptable level.
- 5.8 The immediate legal effect of any plan changes in relation to natural hazards, means that the process needs to be robust with early engagement with the property and infrastructure owners prior to any significant natural hazard changes being announced. Agreed consistent definitions of what constitutes a significant natural hazard will also require some work and utilisation of robust data and mapping tools.
- 5.9 Major infrastructure and network utilities undertake natural hazard risk assessment as part of their asset management activities, and when the location of these is considered originally. Many have plans to improve protections or to relocate, if required. Sometimes due to the nature of the activity there is no other place appropriate, and the asset owner must take the risk associated with this and bear the costs, including those for ongoing safety management and reconstruction themselves. Risk tolerance can vary depending on the specific infrastructure.

Emergency Response

5.10 INZ notes that contractors often act as first responders in cases of national or regional emergency. They have the equipment and local knowledge to manage earthmoving and water courses. However, it is important that civil contractors do not face prosecution for trivial and irrelevant matters at a time when civil contractors are putting in their time, energy, expertise, experience and effort into emergency response activities, often at their own personal cost.

5.11 In such cases, the work is needed immediately, however, may not meet all resource consent conditions that might be applied by decisionmakers. Civil Contractors NZ have noted that during Cyclone Gabrielle in 2023 there were many instances where contractors were threatened with prosecution for taking necessary immediate action to save lives or avoid substantial property damage. Examples include:

- A landslide has blocked a road, and earth must be moved to the roadside to enable access for emergency vehicles, or to save properties or lives. Here, it may not be possible to move soil to a consented site.
- Places where stop banks need urgent repair, or where water courses require urgent diversion to save properties from damage or destruction.

5.12 INZ recommends that this issue is considered as part of the current amendments.

Recommendation clause 64 (new s331AA (6), RMA)

Add a new limb (g), to state: “recognise the pivotal role of civil contractors in emergency response and absolve them from any risk of prosecution in relation to carrying out works in response to any sudden event causing or likely to cause loss of life, injury, or serious damage to property.”

Add the same wording into a new s330 (1AA), RMA, to cover all situations demanding an urgent emergency response, beyond those for which regulations are made

6. System improvements

6.1 The Bill makes a number of amendments to the RMA to enhance compliance and enforcement, reduce regulatory uncertainty, address system gaps, and clarify policy intent to support a well-functioning resource management system.

Consenting process

6.2 The Bill makes changes to simplify the consenting regime by clarifying the scope of further information requests, allows applicants to review consent conditions before decisions, and enables cost recovery for consent reviews due to national direction.

6.3 As part of this, the Bill aims to reduce the need for hearings by removing the requirement for a hearing to be held if a submitter or applicant wishes to be heard and replacing it with a directive

that a hearing must not be held if the consent authority determines that it has *sufficient information* to decide the application.

- 6.4 While **INZ supports** the intent of these proposals, we do expect that consent authorities will consider that a hearing is needed where submitters have indicated a desire to be heard to satisfy the sufficient information requirement. Submitters will also still have appeal rights so even if a hearing is not held this will still remain a risk.
- 6.5 **INZ supports** clause 28 which states that the information requested must be proportional to the nature and significance of the activity. This requirement should assist in right-sizing the application process. Some standardised consenting for repeatable activities e.g. roading infrastructure such as drainage network should be pursued also. We also agree that previous non-compliance under the RMA should be a consideration in applications.
- 6.6 The ability for applicants to request review of draft conditions of consent is also supported and can help ensure that conditions are practical and the outcomes achievable. This would also allow infrastructure construction parties to provide their feedback on processes.

Compliance

- 6.7 The Bill amends the compliance regime by increasing penalties, removing insurance against penalties, and enabling cost recovery for councils. This aligns with the approach taken in the Health and Safety at Work Act 2015. However, INZ thinks insurance needs to be available if the offences are strict liability though i.e. where there is no ability to defend the prosecution
- 6.8 Specifically, it allows councils to recover the actual and reasonable costs incurred in consulting and providing assistance to applicants before an application is lodged. This means that even if an application is not ultimately submitted, councils can still charge for the time and resources spent on pre-application consultations. This provision aims to ensure that councils are compensated for the work they do in assisting applicants, thereby supporting the efficient processing of resource consents and other applications. In supporting this proposal, INZ notes that councils need to be willing and able to itemise and justify their costs.
- 6.9 INZ notes that this approach may drive up development costs, by pushing the costs of compliance onto the applicant, rather than local government. The applicant will likely pass the increased cost onto the ultimate purchaser or user of the activity, such as the homeowner if it is a residential subdivision. However, this is also consistent with this Government's user-pays philosophy, rather than ratepayers generally wearing the cost, particularly where there is a private benefit.

7. Conclusion and recommendations

- 7.1 INZ acknowledges the work that is going into improving the RMA and the phased approach being taken to reform.

- 7.2 However, INZ wishes to see bipartisan approach to the development of a replacements for the RMA that will provide an enduring regime that provides for better environmental outcomes and well as facilitating sustainable development of infrastructure to meet this country's needs.
- 7.3 We thank the Environment Committee for the opportunity to submit on the Resource Management (Consenting and Other System Changes) Amendment Bill and are happy to present our submission in person to the Committee.
- 7.4 We also support the submission of Civil Contractors New Zealand.

Annex 1: Supported Clauses

#	Reference	Recommendation
1		Infrastructure and Energy – Supported Clauses
	Clause 29	1 year for processing specified energy activity
	Clause 42	Consent duration for renewable energy and long-lived infrastructure extended to 35 years.
	Clauses 43 (and clauses 52 & 53)	Consent for renewable activity lapses after 10 years
	Clause 48	Amend network utility operator definition to include inland ports and landside port operations
	Clause 49	Notice of Requirement and assessment of effect – restriction on assessment of alternatives
2	Clause 17	Housing and Urban Development Inserts new sections 77FA and 77FB which relate to the incorporation of the medium density residential standards (the MDRS) in district plans by specified territorial authorities.
	Clauses 6 & 7	Inserts new Sections 25A (3) and (4) which allows the Minister to direct a local authority to prepare or amend the document or plan to meet a national policy statement.
3	Clause 20	Heritage Enables a local authority to apply to the Minister for a direction to use the Streamlined Planning process if the proposed instrument will remove or enable the removal of a heritage protection from buildings or structures in a heritage list in a plan.
4	Clause 37	Natural Hazards Inserts new section 106A Consent authority may refuse land use consent in certain circumstances. Plans changes that introduce new natural hazard rules will now have immediate legal effect.
5	Clauses 28, 30, 36 & 38	Consenting System Improvements Provisions streamlining information requirements and also Applicants may request review of draft conditions of consent can help ensure they are practical and the outcomes achievable.

Annex 2: Recommendations for Amendment

#	Reference	Recommendation
1	Clause 4 Interpretation	Amend Interpretation of long-lived infrastructure to include: • infrastructure providing water supply, stormwater, and wastewater distribution • components of the infrastructure supply chain
2	Clause 64 (new s331AA (6), RMA	Add to cl 64 (new s331AA (6), RMA) a new limb (g), to state: “recognise the pivotal role of civil contractors in emergency response and absolve them from any risk of prosecution in relation to carrying out works in response to any sudden event causing or likely to cause loss of life, injury, or serious damage to property.” Add the same wording into a new s330 (1AA), RMA, to cover all situations demanding an urgent emergency response, beyond those for which regulations are made
3	Clause 123 (b)	Amend clause to add an additional exemption for when an applicant is the proponent of a regionally or nationally significant, long-lived infrastructure project, in which case a longer consent duration can be applied for.